

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL DURAN,

Case No. 2:23-cv-01910-JDP (HC)

Petitioner,

ORDER

v.

DIRECTING THE CLERK OF COURT TO
ASSIGN A DISTRICT JUDGE TO THIS
ACTION

GAVIN NEWSOM, *et al.*,

FINDINGS AND RECOMMENDATIONS

Respondents.

THAT THE AMENDED PETITION BE
DISMISSED FOR FAILURE TO STATE A
COGNIZABLE CLAIM

ECF No. 7

OBJECTIONS DUE IN FOURTEEN DAYS

Petitioner, a state prisoner represented by counsel, brings this action under section 2254 and alleges that the state's denial of parole was erroneous because it was not supported by "some evidence." ECF No. 7 at 3-4. I previously explained that, in light of the Supreme Court's decision in *Swarthout v. Cook*, 562 U.S. 216 (2011), the only requirements for parole in the federal habeas context are that the prisoner be afforded an opportunity to be heard and a statement of reasons for why parole was denied. *Id.* at 220. I gave petitioner leave to amend and the new petition offers only the same argument: that the state failed to produce "some evidence" to justify

1 the denial. ECF No. 7 at 4. The Supreme Court was explicit, stating “it is no federal concern
2 here whether California’s ‘some evidence’ rule of judicial review (a procedure beyond what the
3 Constitution demands) was correctly applied.” *Swarthout*, 562 U.S. at 221. Accordingly, I now
4 recommend this action be dismissed for failure to state a cognizable claim.

5 It is hereby ORDERED that the Clerk of Court shall assign a district judge to this action.

6 Further, it is RECOMMENDED that the amended petition, ECF No. 7, be DISMISSED
7 for failure to state a cognizable claim and the Clerk of Court be directed to close this matter.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of
10 service of these findings and recommendations, any party may file written objections with the
11 court and serve a copy on all parties. Any such document should be captioned “Objections to
12 Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed
13 within fourteen days of service of the objections. The parties are advised that failure to file
14 objections within the specified time may waive the right to appeal the District Court’s order. *See*
15 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
16 1991).

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18 IT IS SO ORDERED.

19 Dated: October 3, 2024



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

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